All County Electric Co., Speer Electric Co., Scharff-Burns Co., and International Brotherhood of Electrical Workers, Local 288. Cases 18–RM–1344, 18–RM–1345, and 18–RM–1346 (formerly 33–RM–339)

October 25, 2000

ORDER DENYING REVIEW

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer-Petitioner's request for review of the Regional Director's Decision and Order (pertinent portions are attached as an appendix). The request for review is denied as it raises no substantial issues warranting review.

Our dissenting colleague questions whether issues of motive may appropriately be considered in a representation proceeding, citing Texas Meat Packers, 130 NLRB 279 (1961). We are puzzled as to the basis for his concern, since neither the cited case nor any other Board decision that we are aware of suggests that such questions are outside the scope of representation proceedings. Indeed, it is quite common for the Board to consider questions of motive or intent in representation cases. See, for example, AK Steel Corp., 317 NLRB 260 (1995) (consideration of motive is "logical part" of inquiry into whether promise of increased benefits was made in order to influence election). See also Special Citizens Futures Unlimited, 331 NLRB No. 19 (2000), slip op. at 4 (Member Hurtgen, dissenting) (considering employer's good faith in finding that Excelsior requirements were satisfied); United Cerebral Palsy Assoc. of Niagara County, 327 NLRB 40 (1998), (Member Hurtgen, dissenting) (considering employer's motive in finding that preelection changes to paycheck process were not objectionable).

Texas Meat Packers does stand for the proposition that unfair labor practice issues as such are not appropriate for resolution in a representation case. However, as the Board has previously explained, the mere fact that the need to determine whether one entity is an alter ego of another often arises in an unfair labor practice context does not mean that the Board is precluded from making such a determination in connection with the resolution of a representational issue. Elec-Comm, Inc., 298 NLRB 705, 706 fn. 2 (1990). In Texas Meat Packers, the union filed election objections alleging that the employer's reasons for laying off employees just before the election were pretextual, and that the layoff was in fact discriminatory because it was motivated by the employees' prounion conduct. The Board overruled the union's objec-

tions, stating that the gravamen of the union's claim would require finding that the employer violated Section 8(a)(3), which the Board could not appropriately do in a representation proceeding without interfering with the General Counsel's exclusive authority with respect to the issuance and prosecution of unfair labor practice complaints. By contrast, a finding of alter ego merely goes to the nature of the relationship between two nominally separate entities; it does not require the Board to find that an unfair labor practice has been committed.

As for the dissent's claim that Section 10(b) precludes us from considering the circumstances surrounding establishment of the alleged alter ego, we note that Section 10(b) is not applicable to representation progettingsase, the Regional Director found, and we agree, that All County Electric Company was created with a purpose to evade Black Hawk Electric Company's collective-bargaining obligations. However, even absent a finding of such a motive, we would find the evidence sufficient to establish that All County Electric was an alter ego of Black Hawk and its successor CCT Corp. d/b/a Black Hawk Electric. See, e.g., AAA Fire Sprinkler, Inc., 322 NLRB 69, 71 fn. 8 (1996) (noting that the Board does not require a finding of intent to evade labor obligations in order to make an alter ego finding).

MEMBER HURTGEN, dissenting

I would grant the Employer-Petitioners' request for review. The Regional Director concluded that All County Electric Co. was at all material times an alter ego of Black Hawk Electric Company and its successor CCT Corp. d/b/a Black Hawk Electric. Accordingly, the Regional Director dismissed the RM petitions. The request for review raises significant issues warranting Board consideration.

First, I would note that it may not be appropriate for the Board, in a representation case, to consider issues of discriminatory motive. See, e.g., *Texas Meat Packers*, 130 NLRB 279 (1961). Those issues were presented here. The factor of such motive is at least highly relevant to the issue of alter-ego status and might even be critical. Indeed, the Regional Director began his analysis of the issue by discussing motive, and he relied heavily on motive in his finding of alter ego status.

Contrary to my colleagues, *Texas Meat Packers*, supra, is very relevant to the instant case. In that case, it was alleged that a layoff was for a discriminatory motive, and that such conduct should be the basis for setting aside an election. The allegation was made solely in a representation case, i.e., as an objection. There was no unfair labor practice allegation. The Board declared that, absent an unfair labor practice allegation, it would not, in the rep-

resentation case, condemn the layoff as unlawfully motivated.

Similarly here, there is no unfair labor practice allegation that the alleged alter egos were created for discriminatory motives. Thus, under *Texas Meat Packers*, the Board should not, in a representation case, declare that there was such a motive.

The cases cited by my colleagues are clearly distinguishable. They do not involve the issue of discriminatory motive. Only one of the cases comes close to that issue. In *AK Steel Corp.*, 317 NLRB 260 (1995), the objectionable conduct was a preelection promise of benefits. Although the Board mentioned motivation, it stated the correct test as whether the employees would reasonably perceive that the promise of benefits was intended to influence the election.¹

Based on the above, I would review the legal issue of whether it is appropriate to consider motive in this case.² Second, assuming that it is appropriate to consider issues of discriminatory motive, I would review whether the Regional Director correctly found that the motive for creating All County Electric Co. was to avoid Black Hawk Electric's collective-bargaining obligations. I would examine whether an employer's effort to become competitive in certain markets demonstrates antiunion motivation.

Further, in regard to the issue of motive, I would review whether, or to what extent, the Board should rely on evidence of events occurring in the early 1980s (when alleged alter ego All County was created) to decide an issue of a party's motivation. In an unfair labor practice context, a party's actions in the early 1980s arguably would be barred by Section 10(b) from serving as a basis for a finding of an unlawful action. It may be inappropriate to avoid Section 10(b) by the device of casting this case as a representation case.³

Finally, notwithstanding my views as set forth above, I recognize that there is some lack of clarity in the law with respect to whether issues of discriminatory motive are appropriate for resolution in a representation case. There is also, in this case, a serious question of whether stale evidence establishes such a motive. Because of these serious issues, I would grant review. My colleagues foreclose that choice.

APPENDIX

REGIONAL DIRECTOR'S DECISION AND ORDER

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in connection with this proceeding to the undersigned. Upon the entire record in this proceeding, I find:

- 1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- 2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹
- 3. The petitions seek elections in units of all employees employed by the Employer-Petitioners in the electrical construction, installation, maintenance, and repair business. The Employer-Petitioners (All County Electric Co. and its divisions, Speer Electric Co. and Scharff-Burns Co.) contend that their employees are unrepresented and that the Union has made a claim for representation by filing a grievance seeking to cover the above-mentioned employees under collective-bargaining agreements nominally between the Union and CCT Corp. d/b/a Black Hawk Electric Co.

Although the grievances referred to Speer Electric Co. and Scharff-Burns Co., all parties agreed at the hearing that the Union was not seeking to represent employees of those Employers and thus no question concerning representation existed with regard to their employees. No substantial further evidence was offered regarding the relationship of those divisions to CCT or ACEC. Accordingly, the petitions in Cases 18–RM–1345 and 18–RM–1346 are dismissed based on the parties' stipulation.

The Union contends that its grievance does not raise a question concerning representation. The grievance alleges that CCT Corp. d/b/a Black Hawk Electric Co. "operated an alter ego company by the name of All County Electrical Company a/k/a Speer Electrical a/k/a Scharff Electrical a/k/a Burns Electrical" in violation of contractual provisions regulating subcontracting, among others. The grievance was heard, and a La-

¹ As the majority observes, I dissented in *United Cerebral Palsy*, 327 NLRB 40 (1998). I expressed my disagreement with the rule in *Kalin Construction*, 321 NLRB 649 (1996). However, even accepting that rule, it has no application here. The conduct in those cases is condemned without regard to discriminatory motive. The employer can *defend* by showing a business justification.

² My colleagues state that they would find alter ego status here even without regard to motive. They offer no support for this summary conclusion. I would not alter the Regional Director's opinion in such a fundamental way without a thorough review of the record.

³ I do not suggest that Sec. 10(b) is applicable to representation cases. However, it is nonetheless questionable whether a matter that would be 10(b) barred in an unfair labor practice should establish a critical finding in a representation case. Further, aside from Sec. 10(b), in both representation cases and unfair labor practice cases, the Board must be cautious in relying on evidence that is stale and outdated. Here, in finding an antiunion motive, the Regional Director relied on an Employer meeting that occurred in 1982. Surely, it is questionable whether such evidence should be used to establish a critical point in this case.

¹ The Employer, All County Electric Co. (ACEC) is an Iowa corporation, and the Employers Speer Electric Co. and Scharff-Burns Co. are divisions of ACEC, all engaged in electrical construction and maintenance in the northeast Iowa area. During the past 12 months, a representative period, each Employer purchased and received at its Iowa facilities materials and supplies valued in excess of \$50,000 directly from sources located outside the State of Iowa.

bor/Management Committee of the National Electrical Contractors' Association, of which CCT Corp. was at the time an assenting member, decided on January 23, 1997, that ACEC was an alter ego of CCT Corp. and thus bound to CCT's contract for the prior 30 days and the rest of the contract's term (June 1, 1997–May 31, 1999).

On May 30, 1997, the Union filed an action in the United States District Court for the Northern District of Iowa seeking enforcement of the arbitration award. On September 29, 1998, that court entered a judgment enforcing the award, basically on the ground that the defendants failed to seek vacation of the award within an appropriate time period and thus were barred from challenging the award. That judgment has been appealed by the Employers.

The RM petitions were filed on July 28, 1997. On August 4, 1997, the Employers also filed unfair labor practice charges under Section 8(e) of the Act, Cases 18–CE–57, 18–CE–58, and 18–CE–59. On September 11, 1997, after an administrative investigation, I dismissed the petitions on the ground that the grievance did not raise a question concerning representation, citing *Asbestos Carting Corp.*, 302 NLRB 197, 199 (1991); and I dismissed the charges in a short form without stating reasons.

On July 28, 1998, the Board granted the Employer-Petitioners' request for review and remanded for a hearing "regarding the alleged alter ego/single employer status of the Employer-Petitioners and Black Hawk Electrical Co., and whether Black Hawk Electrical Co. continues to exist and operate as a viable employer." On October 30, 1998, the Board granted the Union's Request for Reconsideration or Clarification to the extent that it took any issue of whether the Employer-Petitioners and Black Hawk Electrical Co. were single employers out of the remand. Accordingly, from December 7 through 10, 1998, a hearing was held to consider whether the Employer-Petitioners and Black Hawk Electrical Co. are alter egos and whether Black Hawk Electrical Co. continues to exist and operate as a viable employer.

Black Hawk Electric Company (Black Hawk) was an Iowa corporation and a union contractor since the 1960s. It was owned by Paul Stone and other members of his family. Dave Trost started as an electrician and became a supervisor and corporate vice president in the late 1970s. He never owned any stock in Black Hawk.

In February 1980, ACEC was incorporated and existed for 2 years as an uncapitalized, dormant, piece of paper. In 1982, the corporation issued 1050 shares of stock for \$10 each, about half to Paul Stone and family members, and a third to Dave Trost and his wife, Julie. Darvin Chase bought the remaining 100 shares. The board of directors consisted of Trost, Paul, Naomi Stone, and Darvin Chase. At that time, Chase was elected president, and Naomi Stone secretary.

ACEC's first substantial activity of record is reflected in its corporate minute books from July 1982, when it entered into a service agreement with Black Hawk under which Black Hawk performed bookkeeping and clerical work in exchange for 80 percent of ACEC's profits. The minutes also include resolutions to start doing business in markets recently abandoned by Black Hawk. Contemporaneous minutes from Black Hawk's

corporate minute books contain references to difficulties doing business in competition with nonunion firms and a resolution to cease bidding on projects open to nonunion contractors.

Paul Stone decided to retire in 1985. On November 1, 1985, the Stone family sold all its shares in ACEC—about half to Chase and half to Harold Chapman. The corporation also issued new stock in varying amounts to Chase, Chapman, and Trost. At the end of the day Dave Trost owned 54 percent, Chase held 20 percent, and Chapman held about 25 percent; and Dave Trost's wife, Julie, held a nominal fraction. Those four were also the sole directors after that point. The officers were Dave Trost, president, and Darvin Chase, secretary/treasurer.

Black Hawk formally ceased doing business on October 31, 1985. CCT Corporation was incorporated in November 1985. "CCT" stands for Chapman, Chase, and Trost. Its shareholders were Dave Trost (49 percent), Chapman (25 percent), Chase (20 percent), and Jack Wright (6 percent). Its directors were Chapman, Julie Trost, and Mary Ellen Ackerson. Its officers were Chapman (president and vice president), Mary Ellen Ackerson (secretary), and Julie Trost (treasurer).

Stone sold Black Hawk's assets except for its name to ACEC, and Stone sold the name to CCT in November. CCT seamlessly continued Black Hawk's operations. It continued to employ all of Black Hawk's employees, honored Black Hawk's collective-bargaining agreement, and continued to authorize NECA to bargain on its behalf in agreements signed by Chapman on behalf of "Black Hawk Electrical Co." Black Hawk the corporation dissolved as far as the State of Iowa was concerned in September 1986. At that time, Stone was the sole shareholder. The Stone family occupied all the corporate offices at its dissolution.

In 1986, CCT's board of directors turned over—it became Dave Trost, Chapman, Chase, and Wright. In April 1990, CCT redeemed some stock from each of Trost, Chapman, and Chase, and sold it to Wright. After that shuffle, Trost owned 45 percent, Wright 31 percent, Chapman 13.5 percent, and Chase 10.5 percent. In August 1994, Wright sold out to five different employees of CCT: Baldwin, Cagley, Cobb, Boesen, and Brede. Cagley came out with about 10.5 percent of the outstanding shares, and the other four employees came out with 5.1 percent each. Cobb paid \$1 per share.

In February and March 1996, Chapman sold his shares to Dennis Baldwin and was replaced by Baldwin as corporate president. Baldwin then owned 18.5 percent of the company, 186 shares total, for which he had paid \$1 per share. As 1996 proceeded, both Trosts and Ackerson resigned from their offices and board positions. In April 1997, the corporation redeemed the shares of Trost, Cagley, Brede, and Cobb, and shortly thereafter ceased field operations. Trost got \$1 per share for his 450 shares.

There is no evidence in the record concerning the identity of Jack Wright or his relationship (or lack thereof) to any of the other persons involved. Mary Ellen Ackerson was a secretary employed by ACEC engaged in its basic clerical work.

Along with the November 1985 corporate machinations described above, CCT and ACEC entered into a service agreement pursuant to which CCT paid ACEC 80 percent of its prof-

its, and, in return, ACEC offered to guarantee any work on which CCT needed a guarantee, provided bidding assistance and bookkeeping services. Thus, before November 1, 1985, the "union side" held the property and performed services for the "nonunion side" in exchange for the bulk of its profits, while thereafter they switched places and changed names.

In practice, Chapman, on CCT's payroll, did all of CCT's bidding. Chapman testified that CCT never asked ACEC for a bond or a guarantee. CCT did, however, utilize ACEC's clerical and bookkeeping services. ACEC clericals performed all of CCT's clerical and bookkeeping work. Chapman nominally reviewed year-end statements, but he conceded basically signing anything the ACEC secretaries brought him without independent review. Chapman testified that, before 1994, CCT made a profit from which to pay on the service agreement, but that, after 1994, it did not; and by 1997, losses were substantial, although he had no estimate on what that meant in dollar figures.

In January 1988, Chapman, on behalf of "Black Hawk Electric," signed an agreement recognizing the Union as the designated collective-bargaining representative of a majority of the Company's employees. In November 1996, the Union asked CCT again for conversion to 9(a) status, including authorization cards in its request. CCT did not respond that time.²

Both ACEC and CCT operated out of the same building throughout CCT's existence. The building was owned by the Stone family until 1991, then sold to Dave Trost. The Stones, then Trost, leased the space to ACEC and other apparently unrelated tenants. CCT had its own door and parking lot and one room covered by a sublease from ACEC, for which CCT was paying \$200 per month in 1990 and \$600 per month in 1995. ACEC paid Trost \$1500 per month. If someone walked into the CCT door, they would enter a room with a table, some file cabinets, and a TV camera. Someone from ACEC's office upstairs monitored the TV picture and would send someone, often Chapman, down to the CCT room if anyone came in.

CCT had about five to seven rank-and-file electricians employed in and after 1994, the only period addressed. All but one were journeymen. Chapman, the corporate president, functioned as estimator and distributed work in the field. The "bulk" of CCT's work was described as "industrial," that is, performed at manufacturing plants, with "some" commercial, that is, work performed at offices and retail stores. ACEC performed mainly commercial and residential work. ACEC started out with 6 or 7 electricians, then averaged about 30 employees at a time throughout its existence—half journeymen and half apprentices or helpers.

From 1993 to 1997, the only period documented in the record, the two companies had just one common customer other than certain common general contractors. Trost said that was a company that called for ACEC and turned out to be an "indus-

trial" customer, so ACEC referred it to CCT. The Union's witnesses testified that several recent ACEC customers had at one time been customers of CCT.

CCT owned no equipment. It leased a few pickup trucks outfitted as rolling shops from ACEC on a monthly basis. It leased other equipment like cranes on an as-needed basis. The pickup trucks had a "Black Hawk Electric" logo painted on them. CCT bought most of its own supplies directly from independent suppliers. It appears that payments for leased vehicles and equipment and occasional purchases of small supplies from ACEC were made at arm's length for market rates, at least on paper. The companies recorded such transactions as credits and debits on their books, but CCT built up and ran a substantial deficit, as high as \$230,000, for a number of years. CCT made payments on its account when it was convenient and when it had cash. ACEC never made any demands and never issued any deadlines. No interest was ever assessed on the debt. ACEC offered its equipment for lease to other unrelated companies, but apparently did this very little, and then only to contractors with whom it was engaged in specific projects.

CCT's electricians operated pretty much solo or in a partnership with no active onsite supervision. There is no evidence of ACEC employees working on CCT jobs. CCT employees occasionally were subcontracted to work on ACEC jobs. These subcontracts occurred when Chapman notified ACEC that CCT had no work of its own, and ACEC agreed to the subcontracts to keep CCT employees busy. At such times, CCT employees were paid their normal union contract wages and benefits.

Chapman's main office, in which he performed his estimating and corporate work for CCT, was in ACEC's space. Chapman did some estimating, on CCT's clock, for ACEC projects, but he didn't keep track of how much. CCT was not compensated for any work Chapman did on ACEC projects. Chapman continued estimating for CCT after he resigned as president. Chapman, and then Baldwin, decided on CCT's behalf what customers to hold and what jobs to bid on.

Chapman and then Baldwin, directly supervised CCT's employees. Supervision required very little field work—the employees operated independently. Rick Brede had some unspecified field supervisory authority, but apparently not Section 2(11) authority. Chapman or Baldwin decided when they needed to hire additional employees, by calling the Union for a referral. Trost supervised ACEC's employees, with similarly little field supervision. Trost did all hiring, firing, and discipline. Daily assignments and what field supervision was required was covered by Greg Chapman (Harold's brother), Larry Chapman (relationship unknown), and Dan Reilly.

One CCT employee, Cobb, testified that he thought Trost was his boss because whenever anyone explained any company policies to him, it was Trost. As examples, he gave instructions on how to buy company gasoline, and explained what was going on in collective-bargaining negotiations. Cobb also said he "supervised" an ACEC job in Independence, Iowa, time unstated. He said the employee who did the work didn't have an appropriate license, whereas he did, and he just watched and drank coffee, paid by CCT at his usual rate.

In January 1996, the Union asked CCT for information regarding its relationship to ACEC. Some answers were forth-

² Although such a finding is not strictly necessary in light of my disposition of the case, it seems clear that the 1988 agreement all by itself converted the relationship between the Union and CCT, and consequently ACEC, into a 9(a) relationship. See *Oklahoma Installation Co.*, 325 NLRB 741 (1998).

coming in December 1996, after which the Union filed its grievance. Baldwin told Union Business Agent Richie Kurtenbach about this time that pursuit of the issue would result in a "hostile relationship." In December 1996, ACEC notified CCT that it was terminating the service agreement. CCT decided to cease operations, according to Baldwin, because of continuing financial losses and inability to operate without the service agreement. As Baldwin wound down the corporation, he managed to pay off all of its debts, including money owed to ACEC for leases and for the service agreement obligations, with accounts receivable.

In January 1997, Trost made the announcement to the employees that CCT was closing. This was shortly after the Union obtained an arbitration award finding that CCT and ACEC were alter egos, both bound to the Union's contract. In April 1997, three employees of CCT—Brede, Cagley, and Cobb—formed a new corporation, RB Electric, a limited liability company, and bought the name Black Hawk Electric and some stationery and office supplies for \$7000 from CCT and the "Black Hawk" trucks, fully loaded, for \$14,000 from ACEC. Trost handled negotiations for both transactions, although Baldwin signed the eventual agreement on CCT's behalf for sale of the company name and office supplies.

CCT and ACEC had their own phone numbers, but all the phones in the building included both companies' lines. The companies had their own separate licenses, state registrations, and sales tax permits. ACEC's general liability insurance policy and workers' compensation insurance policy covered CCT and CCT's employees. Trost testified that he believed CCT paid a share of the premiums, but he didn't know how much, and no such payments are indicated in the record.

CONCLUSIONS

Based on the foregoing and the record as a whole, I find that ACEC was at all material times an alter ego of Black Hawk Electric Company and its successor CCT Corp. d/b/a Black Hawk Electric, and thus became a party to Black Hawk's and CCT's collective-bargaining relationship.

Determining whether two nominally separate employers are in fact alter egos depends on the degree of identity of ownership, management, business purposes, methods of operation, equipment, customers, and supervision. No one factor is determinative. Finding alter ego depends on an analysis of all the facts of the case, including the preceding list, as well as any evidence that creation of the alter ego was intended as a device to evade responsibilities under the Act, and the degree to which the nominally separate employers maintain an arm's-length relationship in dealings with each other. Hebert Industrial Insulation Corp., 319 NLRB 510, 522 (1995); Advance Electric, 268 NLRB 1001, 1002 (1984).

Initially, I find that ACEC was created and commenced operations with a purpose to evade Black Hawk's collective-bargaining obligations. The corporate minutes make clear that ACEC went into business intending to operate nonunion to pursue markets in which Black Hawk's collectively bargained overhead made it difficult to compete. That is the classic anti-union motive relied on by the Board in a number of prior alter

ego cases. E.g., Hebert Industrial Insulation Corp., supra; Samuel Kosoff & Sons, 269 NLRB 424, 429 (1984).

Petitioner contends the evidence about the reasons for ACEC's birth refutes a finding of bad motive. According to the Petitioner, it shows ACEC going into markets in which Black Hawk and CCT could not compete, thus costing Black Hawk and CCT nothing. It cites Victor Valley Heating & Air Conditioning, 267 NLRB 1292 (1983), in support. In Victor Valley, however, one company, with a union contract, was owned solely by the parents, and the alleged alter ego, operated nonunion, solely by their son. The union company got out of the residential construction business because of losses caused by a recession and nonunion competition. The nonunion company started up in order to provide the son a job and to profit in markets the union company was abandoning, i.e., residential construction. The administrative law judge summarily concluded that the evidence did not establish a motive to avoid contractual obligations between the union company and its union. Victor Valley is thus distinguishable based on the multitude of motives involved.

I have also considered *Polis Wallcovering, Inc.*, 323 NLRB 873, 877 (1997), in which the administrative law judge states that "[t]he Board has specifically found that the creation of an enterprise for the purpose of obtaining nonunion work does not establish an unlawful motive," citing *First Class Maintenance*, 289 NLRB 484 (1988); *Peter Kiewit Sons Co.*, 231 NLRB 76 (1977); and *Victor Valley*. As just stated, I find *Victor Valley* distinguishable. I find no support in *Peter Kiewit* for the cited proposition—on the contrary, *Peter Kiewit* is purely a single employer case in which the question of motive is not raised or addressed. And in *First Class Maintenance*, the decision to go nonunion was made by a customer. In this case, on the other hand, the judgments on competitiveness and the decisions on which markets to compete in were made solely by the parties.

Polis Wallcovering found numerous bases for rejecting a contention of alter ego, so the additional rejection of unlawful motive can be classified as unfounded dicta by an administrative law judge. I find the weight of authority to be to the contrary. Haley & Haley, Inc., 289 NLRB 649, 654 (1988) (Board decision); Advance Electric, 268 NLRB 1001, 1004 (1984) (Board decision); Hebert Industrial Insulation Corp., supra (administrative law judge decision); Samuel Kosoff & Sons, 269 NLRB 424, 429 (1984) (administrative law judge decision).

Deeming this a bad motive seems to be the better argument as well. Surely, if Black Hawk Electric had repudiated its contract on the ground that it was cheaper to go nonunion, that would be considered bad motive. I don't see how the motive becomes benign if the same end is achieved via the corporate fiction of using an alter ego to go half nonunion.

In addition, I find the arm's-length relationship claimed by the Petitioner suspect. The company books make it appear that each company paid the other market rates for exchange of supplies and leases of space or equipment. On the other hand, Chapman did substantial work for ACEC on CCT's payroll without compensation; the profit percentage compensation under the service agreement was completely unrelated to the value of services rendered; and ACEC provided CCT a robust revolving line of credit, without interest or any apparent secu-

rity. None of those circumstances would exist in a truly arm's-length relationship.

ACEC also magnanimously subcontracted with CCT to provide work at union contract rates on its nonunion jobs when CCT had no work for its own employees. Contrary to the Petitioner's claim that this was "standard subcontracting practice in the industry," I find it unlikely that an independent company would subcontract with another just to keep its ostensible competitor's employees busy without competitive bidding or another economic justification.

As for ownership, when ACEC began operating in 1982, ACEC had 1050 shares outstanding. Paul Stone owned 220; his wife, Naomi, owned 50; and Bill Burger, an employee of a bank in Waterloo, nominally owned 250 shares in trust for the Stones' children. There is no evidence of the terms of the trust. Dave Trost owned 300 shares; his wife, Julie, owned 50; and Darvin Chase owned 100. The last 80 shares were owned by Patricia Kelley, about whom no other evidence appears in the record. Black Hawk was wholly owned by Paul Stone.

In November 1985, Paul Stone retired and CCT Corp. succeeded to Black Hawk's union-represented operations. Dave Trost owned 490 of CCT's initial offering of 1000 shares; Harold Chapman owned 250, Darvin Chase owned 200, and Jack Wright owned 60. On the same date, the Stone family shares (including the trust shares) as well as Kelley's shares in ACEC were purchased by Chapman and Chase, and the corporation issued new shares, primarily to Trost, the rest to Chapman and Chase. At the end of the day, Dave Trost owned 54 percent of ACEC; Chase held 20 percent; Chapman held about 25 percent; and Dave Trost's wife, Julie, held a nominal fraction.

Despite the subtle variations, this might be considered substantially identical ownership in its own right. Before 1985, both Black Hawk's and ACEC's majority owners were the Stone family. There is no evidence that Naomi Stone or the trustee exercised any meaningful role in the operation of the business, so this would appear to be identical family ownership. After November 1, 1985, both ACEC and CCT were majority owned by Chapman, Chase, and Trost, even though their respective shares varied a little. I find no warrant for requiring that any specific individual dominate such an association for the two firms to be "substantially identically" owned.

To the extent that Chapman, Chase, and Trost's varying shares make a difference, the Board has found alter egos even without "substantially identical" ownership when "the older company continued to maintain substantial control over the business claimed to have been sold to the new company." Superior Export Packing Co., 284 NLRB 1169, 1170 (1987). Even if the ownership in this case is considered distinct, at all relevant times, one company controlled the other by virtue of the service agreement. Despite the fact that terms of the agreement after 1985 required CCT to maintain its own workforce and supervisory staff and permitted considerable independence of action, the Employer's own witnesses testified directly that CCT existed at the sufferance of ACEC, and when ACEC pulled the plug, there was no way to go on. Before 1985, ACEC existed at the sufferance of Black Hawk, under a virtually identical agreement. The service agreement overcomes any inference that the differences in ownership might cut

away from a finding of alter ego. See McAllister Bros., Inc., 278 NLRB 601 (1986).

As for supervision and management, at the field level, supervision was kept separate. Employees of both companies, however, operated independently with little field supervision. The Board has considered this "the same method of supervision" in the alter-ego analysis. See *Hebert Industrial Insulation Corp.*, supra; *Advance Electric*, supra.

At higher management levels, Chapman was responsible for deciding what work to solicit, hiring, firing, etc., for most of CCT's life; and Trost fulfilled the same functions for ACEC. I do not consider that "separate" management, however, because Chapman and Trost were two-thirds of the common ownership of both companies. I believe "separate" management and supervision must be "independent" of the controlling interests that allegedly connect two companies as alter egos. In addition, the service agreement and Chapman's own testimony that he acted as a mere rubber stamp for any CCT corporate paperwork that came out of ACEC's bookkeeping and clerical departments preclude finding his supervision and management separate from Trost's and ACEC's.

CCT utilized nothing but ACEC equipment. Both companies at all times pursued similar business purposes, customers, and methods of operation. Both engaged exclusively in electrical construction and maintenance contracting, in the same geographic area, sharing many of the same general contractors at various times as customers. See *CEK Industrial Mechanical Contractors*, 295 NLRB 635 (1989) (one alter ego engaged exclusively in plumbing, while the other engaged in plumbing and more general construction contracting).

Customers differed to an extent because of ACEC's successful pursuit of nonunion customers for which CCT chose not to compete. ACEC obtained this work, however, only by succeeding in its proscribed purpose of evading CCT's responsibilities under its collective-bargaining agreement. "We shall not alter our conclusion that the two companies share a substantially identical customer base merely because [one] succeeded in achieving the outcome that its unlawfully motivated conduct was designed to achieve." *Haley & Haley, Inc.*, supra.

The Employer claims that ACEC cannot be an alter ego of CCT because it preexisted CCT. In CEK Industrial Mechanical Contractors, Inc., supra, the nonunion half of the doublebreasted firm also preexisted the union half, but the Board still found them to be alter egos. In this case, Black Hawk preexisted ACEC, and CCT. I find that ACEC was established as Black Hawk's alter ego to evade Black Hawk's collectivebargaining obligations. I see no reason why CCT's succession to Black Hawk's business negates the alter-ego conclusion. The succession merely replaced the Stone family ownership, supervision, and control with Chapman, Chase, and Trost ownership, supervision and control, and moved the cash and assets from one side of the double-breasted firm to the other. As far as employees and customers were concerned, however, nothing happened. If anything, the corporate machinations that occurred in 1985 merely served Petitioner's antiunion purposes by making it easier to pull the plug on CCT, which was what eventually happened.

Petitioner also argues that ACEC cannot be the alter ego of CCT because at all times during the pendency of its petition, CCT was closed and its business had been sold to former rankand-file employees of CCT. If ACEC was ever an alter ego of CCT, or its predecessor Black Hawk, it became bound to the collective-bargaining relationship at that point. I have found that Black Hawk and ACEC, then CCT and ACEC, were alter egos since 1982. ACEC thus became party to their contracts, and to the 9(a) relationship established in 1988. ACEC gets out of those obligations only with a proper showing of loss of majority support, not by simply closing or selling off CCT. The Board has never dismissed an alter ego allegation on the grounds that the union half of the double-breasted operation was sold or closed by the time of the charge or hearing. E.g., Twin Cities Electric, 296 NLRB 1014 (1989); Haley & Haley, Inc., supra.

In sum, I conclude again that the Union's pursuit of a grievance seeking to have ACEC's employees covered by an existing collective-bargaining agreement does not raise a question concerning representation, and the petition in Case 18–RM–1344 should accordingly be dismissed. Cf. Asbestos Carting Corp., 302 NLRB 197, 199 (1991); Woolwich, Inc., supra. In accordance with the Board's remand, I also find that ACEC has at all relevant times been an alter ego of Black Hawk and CCT Corp. Finally, I find that "Black Hawk Electrical Co. continues to exist and operate as a viable company," but that since the sale of that trade name to RB Electric Co., it is no longer related to ACEC, CCT, or the original Black Hawk Electrical Company—the Iowa corporation owned and dissolved by Paul Stone.

ORDER

For the foregoing reasons, it is ordered that the petitions in Cases 18-RM-1344, 18-RM-1345, and 18-RM-1346 are dismissed.